

REMARKS

Claim 25 is currently pending in the present application and the Examiner rejected Claim 25 in an Office Action dated October 25, 2004. Applicant submits this reply in response to the Office Action.

Amendments to the Specification

The disclosure has been amended to correct and clarify the description. For the amendment to the paragraph on page 9 of the specification, the word "design" has been amended to "designed." For the amendment to the paragraph on page 12 of the specification, support for this correction can be found in Fig. 4 referring to the opening end of the slider as reference numeral 36. Additional support resides in the second sentence of the subject paragraph. No new matter has been added by these amendments.

Claim Rejections Under 35 U.S.C. §103

In the above-referenced Office Action, the Examiner rejected Claim 25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,259,951 to Zimmerman. To establish a prima facie case of obviousness under 35 U.S.C. §103(a), the Examiner must show that 1) the references teach all of the elements of the claimed invention, 2) the references contain some teaching, suggestion or motivation to combine the references, and 3) the references suggest a reasonable expectation of success. See MPEP §2142. See also In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); In re Kotzab, 217 F.3d 1365, 55 USPQ2d 1313 (Fed. Cir. 2000).

In the Office Action, the Examiner has stated that the Zimmerman discloses "... a lower seal member (7) having a second mating surface and a groove-type recess formed at the bottom of the lower seal member (7) . . . ," apparently suggesting that Zimmerman discloses or suggests a closure bar groove as claimed by the Applicant. In addition, the Examiner states that the Zimmerman slider (5) has a "closure member (bar) formed with said slider," without identifying what portion of the slider (5) is supposed to constitute the "closure member (bar)." The Applicant respectfully disagrees

with the Examiner. Zimmerman does not disclose a closure bar groove, nor a closure bar, as claimed by the Applicant. A closure bar groove of the present invention is a groove within a lower seal member for receiving a closure bar of a slider. The Applicant notes to the Examiner's attention the sentence of the specification of the present application at page 9, lines 20-21, that, as amended, states "[c]losure bar groove 32 is designed to receivingly accept a closure bar 48 of slider 16, shown, e.g., in Fig. 6." Zimmerman fails to show or teach such a groove within the strip 7. Any recess of Zimmerman appears to be a bottom support for the slider 5 for squeezing the strip 6 against the other strip 7. In contrast, the closure bar groove of the present invention allows a closure bar from the slider to at least partially wrap around the upper seal member and/or lower seal member. Such structure allows the upper seal member 12 and lower seal member 14 of the present invention to be configured for items such as jackets, whereas the strips 6 and 7 of Zimmerman overlies one another for use as a bag or envelope. If the slider 5 of Zimmerman was attempted to be used with products such as jackets, the seal would project substantially forward as a raised seam. With regard to the present application, the closure bar groove within the lower seal allows the upper seal member to extend in a first direction and the lower seal member to extend in a second direction, making the seal practical for jackets. Zimmerman fails to disclose this structure. Accordingly, the Applicant respectfully submits that the structure shown in Zimmerman will not allow the use of the Zimmerman slider to be practically used for products such as jackets.

In addition to not teaching the closure bar groove within the lower seal member, the Examiner has not identified any suggestion or motivation in the art to include a closure bar groove in the lower seal member. Furthermore, there has been no showing by the Examiner that the reference suggests a reasonable expectation of success for including a closure bar groove and placing the groove in the lower seal member. Accordingly, the Applicants respectfully submit that a proper showing of obviousness under 35 U.S.C. §103(a) is lacking.

In the Office Action, the Examiner stated that "the particular location and/or the arrangement selected of an elements is considered to be no more than an obvious matter of design choice" The Applicant respectfully disagrees. The Zimmerman slider 5 and strips 6,7 provide an overlapping

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configuration for the material extending from the strips. Furthermore, whether the present invention is used in a bag, envelope or in a jacket, as discussed in the foregoing paragraphs, the Zimmerman slider 5 and strips 6, 7 do not include a closure bar and closure bar groove as claimed in the present application. In determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences themselves would have been obvious, but whether the claimed inventions as a whole would have been obvious to a person of ordinary skill in the art. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). See also MPEP §2141.02. Applicants assert that the content of Claim 25 as a whole is not common knowledge or well known in the art when applied to solving the problem addressed by the present invention, that is, a low profile seal that may be used either in a variety of products, to include bags and jackets. To Applicants' knowledge, this has not been done before. In the event that the Examiner persists in such §103 rejections based on a "design choice" or a "limitation is one of preference" rationale, Applicants respectfully request that the Examiner provide documentary evidence in accordance with 37 CFR § 1.104(c)(2). See also MPEP § 2144.03(c). In addition, if the Examiner intends to assert the rejections based on an assertion that the claimed subject matter is based on personal knowledge, then the Examiner is respectfully requested to provide an affidavit in accordance with 37 CFR §1.104(d)(2). See also MPEP § 2144.03(c). Such section requires that when a rejection in an application is based upon facts within the personal knowledge of the Examiner, the data relied upon should be as specific as possible and must be supported, when called for by the Applicant, by the affidavit of the Examiner, such affidavit to be subject to contradiction or explanation by affidavits of Applicants or other persons. As such, Applicants also respectfully request the opportunity to respond to any such affidavit of the Examiner if one is submitted.

For the foregoing reasons, the Examiner is requested to withdraw the 35 U.S.C. §103(a) rejection of Claim 25.

It is also noted to the Examiner's attention that other claims are presented herein in order to further claim the invention.

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Double Patenting Rejections

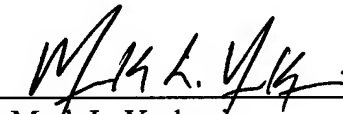
The Applicant has noted the Examiner made a nonstatutory double patenting rejection of Claim 25. The Applicant will submit a Terminal Disclaimer or otherwise address the nonstatutory double patenting rejection at such time as the Examiner maintains the rejection and/or identifies all claims to which the double patenting rejection will apply.

Based upon the foregoing, the Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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